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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHERYL KATER and SUZIE KELLY,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

CHURCHILL DOWNS INCORPORATED, a  
Kentucky corporation, and BIG FISH  
GAMES, INC., a Washington corporation,

Defendants.

Case No.: 2:15-cv-00612-RBL

**DECLARATION OF DAVID  
GROSSMAN IN SUPPORT OF  
DEFENDANTS' RENEWED  
MOTION TO COMPEL  
ARBITRATION**

MANASA THIMMEGOWDA, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

BIG FISH GAMES, INC., a Washington  
corporation; ARISTOCRAT  
TECHNOLOGIES INC., a Nevada  
corporation; ARISTOCRAT LEISURE  
LIMITED, an Australian corporation; and  
CHURCHILL DOWNS INCORPORATED, a  
Kentucky corporation,

Defendants.

Case No.: 2:19-cv-00199-RBL

**DECLARATION OF DAVID  
GROSSMAN IN SUPPORT OF  
DEFENDANTS' RENEWED  
MOTION TO COMPEL  
ARBITRATION**

1 I, David Grossman, hereby declare as follows:

2 1. I am the Senior Director of Engineering at Big Fish Games, Inc. (“BFG”).  
3 I have been employed by BFG since October 2012. My responsibilities as Senior Director of  
4 Engineering include supporting general engineering and product development efforts at BFG. I  
5 make this declaration based on my personal knowledge and, if called as a witness, I could and  
6 would competently testify thereto.

7 2. In the ordinary course of exercising my responsibilities as Senior Director  
8 of Engineering, I have access to and rely upon BFG business records documenting user access to  
9 BFG games, including Big Fish Casino (“BFC”). I am familiar with the manner in which, in the  
10 ordinary course of business, these records are compiled. I consider these business records to be  
11 accurate and reliable.

12 3. According to my review of BFG’s user gameplay records, Cheryl Kater  
13 last accessed BFC on February 28, 2020; Suzie Kelly last accessed BFC on March 9, 2020; and  
14 Manasa Thimmegowda last accessed BFC on February 20, 2019.

15 4. In the ordinary course of exercising my responsibilities as Senior Director  
16 of Engineering, I have access to BFG business records documenting letters received by BFG  
17 from users opting out of the arbitration agreement contained in the Big Fish Terms of Use  
18 (“TOU”), which govern use of and access to all BFG games. I am familiar with the manner in  
19 which, in the ordinary course of business, these records are compiled. I consider these business  
20 records to be accurate and reliable.

21 5. According to my review of BFG’s opt-out records, BFG has not received  
22 an opt-out letter from any individual named Cheryl Kater, Suzie Kelly, or Manasa  
23 Thimmegowda.

24 6. In the ordinary course of exercising my responsibilities as Senior Director  
25 of Engineering, I have access to BFG business records documenting BFG customer support  
26 communications with users of BFG games. I am familiar with the manner in which, in the  
27

1 ordinary course of business, these records are compiled. I consider these business records to be  
2 accurate and reliable.

3 7. BFG's customer support records include communications between BFC  
4 user "Dent Doc," which is the BFC user name of Manasa Thimmegowda, and BFG customer  
5 support personnel on and around November 21, 2018. A copy of certain of those  
6 communications is attached hereto as **Exhibit A**.

7 8. Based on my review of these records, and my knowledge of customer  
8 support representatives' ordinary business practices, I can determine that certain of the text in the  
9 communication from BFG to Ms. Thimmegowda on November 21, 2018 would have appeared to  
10 Ms. Thimmegowda as a clickable hyperlink, linking directly to the TOU themselves. Below is  
11 an excerpted quote of the relevant part of that communication. I have bolded and underlined the  
12 language that I have determined would have appeared as a hyperlink to the TOU:

13 Per our Terms of Use, we are unable to issue refunds for chips or  
14 gold bars once they have been used, and you have our deepest  
15 apologies for the inconvenience this may cause. More information  
16 about our Terms of Use can be found here:

17 **Terms of Use**

18 9. BFG's customer support records also include communications between  
19 Suzie Kelly and BFG customer support personnel on and around March 2, 2019. A copy of  
20 certain of those communications is attached hereto as **Exhibit B**.

21 10. Based on my review of these records, and my knowledge of customer  
22 support representatives' ordinary business practices, I can determine that certain of the text in the  
23 communication from BFG to Ms. Kelly on March 2, 2019 would have appeared to Ms. Kelly as  
24 a clickable hyperlink, linking directly to the TOU themselves. Below is an excerpted quote of  
25 the relevant part of that communication. I have bolded and underlined the language that I have  
26 determined would have appeared as a hyperlink to the TOU:  
27  
28

I'd also recommend taking a look at our Terms of Use to ensure that you don't ever have to worry about this sort of thing in the future.

**Terms of Use**

11. BFG's customer support records also include communications between Cheryl Kater and BFG customer support personnel on and around June 2, 2018 that referenced the TOU. A copy of certain of those communications is attached hereto as **Exhibit C**.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration is executed this 9th day of April, 2020, in Oakland, California.

DocuSigned by:  
  
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David Grossman